Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS MICHAEL McROBERTS

Appeal No. 2000-1416
Application No. 09/073,847

HEARD: FEBRUARY 21, 2001

Before COHEN, McQUADE, and GONZALES, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4 through 7, and 10 through 12. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a grid drain and to a sink and grid drain combination. A basic understanding of the invention can be derived from a reading of exemplary claims 1

and 7, copies of which appear in the APPENDIX to the brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the documents listed below:

Danver	1,070,424	Aug. 19, 1913
Izzi	4,067,072	Jan. 10, 1978
Izzi, Sr.	4,910,811	Mar. 27, 1990

The following rejections are before us for review.

1. Claims 1, 4 through 7, and 10 through 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Danver.

2. Claims 1, 4 through 7, and 10 through 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Danver in view of Izzi, Sr. and Izzi.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the final rejection and answer (Paper Nos. 13 and 16), while the

complete statement of appellant's argument can be found in the brief (Paper No. 15).

In the brief (page 2), appellant expressly indicates that the claims stand or fall together.[1] Consistent with 37 CFR 1.192(c)(7), we select claim 1 for review, with the remaining claims standing or falling therewith.

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,[2] the declaration of Thomas Michael McRoberts (the

[1] The examiner's statement in the answer (page 2) regarding the grouping of claims is inaccurate.

[2] In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

present inventor) of June 16, 1999 (copy attached to brief) and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Initially, we recognize that appellant is addressing an air bubble problem[3] that occurs relative to a current grid drain used with a sink without an overflow channel. In particular, when sufficient water flows on top of the drain an air bubble will form inside the drain. The air bubble effectively blocks the drain. Appellant's grid drain has at least 10 drain holes with the size of the drain holes being large enough so that an air bubble will not form or will break immediately upon formation. The drain holes are in a pattern that is not uniform, with adjacent drain holes not being

[3] In the brief (page 6), is it indicated that the claimed invention solves "a problem that was not recognized by the prior art". However, based upon declarant McRoberts' statements (paragraph 4), it appears to us that the problem was earlier observed in school lavatory sinks "around 1994-1995."

equidistantly spaced from each another. (specification, page 2)

Appellant's claim 1 is drawn to a grid drain for use in sinks without overflow drains comprising, inter alia, at least 10 drain holes, wherein perimeter holes are not equidistant from inside holes, and wherein the size of the drain holes is greater than 6mm to about 10mm in diameter.[4]

The first rejection

We do not sustain this rejection of claim 1 based upon the Danver teaching alone. It follows that the rejection of remaining claims 4 through 7 and 10 through 12 is likewise not sustained since these claims stand or fall with claim 1 as earlier indicated.

[4] Independent claim 7 likewise sets forth at least 10 drain holes, perimeter holes not equidistant from inside holes, with the size of the drain holes being greater than 6mm to about 10mm in diameter. The other independent claim 12 also recites at least 10 drain holes and perimeter holes that are not each equidistant from inside holes but sets forth that the drain holes have a diameter of about 8mm.

The patent to Danver teaches a lavatory sink with a perforated coupling and strainer member fitting in the outlet portion 3 thereof (Fig. 1). Figure 2 depicts the pattern of holes in the perforated top portion 4 of the coupling and strainer member.

The examiner takes "Official Notice" that changing the size of water conduits affects the rate of flow, and that the smaller the drain hole size in a drain plate the finer the particles that will be removed from an outflow. We do not take issue with these basic principles.

The difficulty we have with the examiner's rejection is that when we consider the Danver reference as a whole, while setting aside what appellant has informed us of in the present application, we do not perceive any suggestion in the Danver teaching for selecting, in particular, a size of drain hole greater than 6mm to about 10 mm in diameter. Accordingly, it is clear to us that only reliance upon impermissible hindsight would have enabled one having ordinary skill in the art to derive the claimed invention on the basis of the Danver

teaching. It is for this reason that the rejection cannot be sustained.

The second rejection

We also do not sustain this second rejection of claim 1 founded upon the Danver, Izzi, Sr., and Izzi disclosures. It follows that the rejection of remaining claims 4 through 7 and 10 through 12 is likewise not sustained since, as mentioned earlier, these claims stand or fall with claim 1.

In this rejection, the examiner supplements the Danver patent with the respective patents to Izzi, Sr. and Izzi that each depict an irregularly spaced drain hole pattern. Appellant argues that the additional references do not remedy the defects of the Danver document. We agree.

Akin to appellant’s point of view, while it can be visually appreciated that the Izzi, Sr. and Izzi patents portray the knowledge in the art of drains with irregularly

spaced holes therein,[5] these documents simply do not overcome the deficiency of the Danver teaching in that they each would not have been suggestive of the particular size of drain hole now claimed. For the above reason, the second rejection of claim 1 cannot be sustained.

In summary, this panel of the board has:

not sustained the rejection of claims 1, 4 through 7, and 10 through 12 under 35 U.S.C. § 103(a) as being unpatentable over Danver; and

not sustained the rejection of claims 1, 4 through 7, and 10 through 12 under 35 U.S.C. § 103(a) as being unpatentable over Danver in view of Izzi, Sr. and Izzi.

The decision of the examiner is reversed.

[5] It worthy of noting that the Danver drain hole arrangement (Fig. 2) appears to us to include perimeter holes that are not each equidistant from some inside holes.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
JOHN P. McQUADE Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN F. GONZALES Administrative Patent Judge	)	

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